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In re Application of
POULAKIS, Konstantinos
Application No.: 09/700,910
PCT No.: PCT/EP98/03406
Int. Filing Date: 22 May 1998
Priority Date: None
Attorney Docket No.: 041013R004
For: CLOSURE PART AND METHOD
FOR ITS PRODUCTION AND APPARATUS
FIR USING THE METHOD

DECISION ON

REQUEST UNDER

37 CFR 1.497(d)

This is a decision on applicant's "LETTER REGARDING CHANGE OF INVENTORSHIP PURSUANT TO 37 CFR §1.48(f)(1)" filed in the Patent and Trademark Office (PTO) on 13 February 2001, forwarding an executed declaration which adds inventor Konstantinos POULAKIS and deletes inventor Axel SCHULTE. The communication has been treated as a request under 37 CFR 1.497(d). Pursuant to authorization therein, the required petition fee of \$130.00 (37 CFR 1.17(I)) has been charged to counsel's Deposit Account No. 02-4300.

BACKGROUND

On 22 May 1998, applicants filed international application No. PCT/EP98/03046, which designated the United States. A Demand electing, *inter alia*, the United States, was filed on 06 March 1999 prior to the expiration of 19 months from the priority date. Consequently, the deadline for entry into the national stage by paying the basic national fee in the U.S. expires as of midnight of 22 November 2000.

On 21 November 2000, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, payment of the full U.S. basic national fee. A declaration was not filed.

On 29 December 2000, the PTO mailed a "Notification of Missing Requirements Under 35 U.S.C. 371" (Form PCT/DO/EO/905) requiring a declaration in compliance with 37 CFR 1.497(a)-(b) and a surcharge for providing the oath and declaration later than the appropriate 20 or 30 months from the priority date. The notice set a one-month period for reply.

On 13 February 2001 applicant filed an Oath or Declaration of the inventor. In this case, inventor Konstantinos POULAKIS who is on the Declaration was not in the published international application.

DISCUSSION

A petition under 37 CFR 1.497(d) must include:

- (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (2) the fee set forth in § 1.17(I); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see 37 CFR §3.73(b) of this chapter).

A review of the application file reveals that applicants have satisfied items (2) because the petition fee of \$130.00 has been charged to Deposit Account.


Applicants, however, have not provided items (1) and (3). In regard to item (1), the remarks submitted on 13 February 2001 are insufficient. Specifically, there are no statements from Mr. Poulakis (the added inventor) and from Mr. Schulte (the deleted inventor) that the error in inventorship occurred without a deceptive intent. A statement is required from each inventor being added and deleted that the inventorship error occurred without deceptive intention. In addition, with respect to item (3), there does not appear to be a written consent of the assignee: Gottlieb Binder GmbH & Co. Note MPEP 201.03.

CONCLUSION

For the reasons above, the request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.497(d)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office..


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